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Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Norio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Tuesday, April 15, 1952 SIXTEENTH INFORMAL MEETING

PROTOCOL

Mr. Otabe stated that a number of points had been raised by the Treaties Bureau in connection with paragraph 6 of the Protocol. It was anticipated that questions would arise in the Diet on this paragraph, and that the concept of military bases and areas under temporary military occupation had political implications. It was suggested therefore that this paragraph be deleted and that its substance be incorporated in an exchange of notes.

Mr. Adams replied that this paragraph was standard and that he could see no reason why the phrases in question should be the subject of Diet debate. Mr. Bassin added that there were no "military bases"

in Japan and that only the phrase "temporary military occupation" had a bearing in this case. He pointed out that, notwithstanding any theoretical discussion concerning the status of the Ryukyu Islands, the fact remained that these islands were under such temporary military occupation (a point previously discussed at the meeting on April 11, as was also the question of the future status of these islands).

Mr. Kanematsu stated that with the coming into effect of the Treaty of Peace with Japan there was no further legal basis for the continued military occupation of the Ryukyu Islands. If this occupation were to cease, and if some form of United Nations trusteeship were not simultaneously effective, the status of the Ryukyu Islands would be vague and would not come within the scope of paragraph 6.

Mr. Bassin replied that if Mr. Kanematsu were correct he would assume that the status of the military occupation of the Ryukyu Islands would be clarified by the United States for various cogent reasons entirely apart from the considerations involved in the FCN Treaty. The fact was that the United States regarded these islands as falling within the definition of paragraph 6 (i.e., a territory under the authority of the United States by reason of temporary military occupation). He added that if a trusteeship agreement were reached on the islands, it was to be assumed that the United States would administer them. Mr. Bassin further pointed to Japan's acceptance of such a trusteeship administration by the United States in Article III of the Treaty of Peace. In the event of this occurence, it was to be assumed that the United States would at that time make a reservation to the FCN Treaty with respect to the Ryukyu Islands, just as it had in Article XXIII for the Trust Territory of the Pacific Islands.

In response to a question by Mr. Otabe, Mr. Adams again stated that the phrase "military bases" did not apply to areas in Japan, and added that this reservation was necessary in the eyes of the United States because of its military bases in other parts of the world. He stated that the United States has concluded arrangements, usually under lease, with various countries for military, naval, or air bases. Some of these have been held as bases for a number of years, particularly in the Caribbean area.

Mr. Yukawa stated that it was possible that the Treaties Bureau might wish to make of record some clarification on the status of the Ryukyu Islands, based on its interpretation of the Treaty of Peace discussions at San Francisco. This - in addition to the statement on Japan's desire and intention to accord special customs and other treatment to these islands, as discussed at the meeting of April 11 - might be inserted in the memoranda of conversation on the present meetings together with an appropriate comment by the American side.

Mr. Adams replied that there appeared to be no objection to the recording of such statements, and that he believed this question should be handled in this manner and not included in any additional provision or reservation in the present FCN Treaty.

Mr. Yukawa then stated that it was not intended that these memoranda receive wide circulation nor be released to the press, but that the question of the applicability of the Treaty to the Ryukyu Islands would be of great general interest. He suggested that a statement clarifying this point and furnishing more precise details than are found in the standard draft be prepared for public release at an appropriate time.

Mr. Singer replied that it was not believed that the Department of State would perceive any objection to such clarification for the public by the Ministry of Foreign Affairs and stated that further study would be given this point when the comments of the Treaties Bureau were available for discussion.

Mr. Yukawa stated that he would consider this matter further and consult with the Treaties Bureau.

Mr. Otabe then asked for an interpretation of the phrase "interests held directly or indirectly" as used in paragraph 2 of the Protocol.

Mr. Bassin replied that this phrase was intended to remove any doubt concerning the payment of compensation for the taking of "any" legitimate interests in property. Mr. Bassin said that "a direct interest" in property was an interest in which the title or right to the property was immediate and without the intervention of a connecting channel. On the other hand, an "indirect interest" in a property was an interest which was claimed through a medium or by a circuituous route. The phrase in question is intended to extend to every type of right or interest in property which is capable of being enjoyed as such, and upon which it is practicable to place a monetary value. These direct and indirect interests in property include not only rights of ownership, but rights of possession, use and enjoyment; it includes a lease hold interest, easements, contracts, franchises, and other tangible and intangible property rights. In response to a question by Mr. Otabe as to an illustration of an indirect interest in property, Mr. Bassin said that it was intended to refer to an interest held by nationals of one contracting party in a corporation of a third state, for example, an interest held by an American in a Japanese corporation owned by a Canadian subsidiary of an American corporation. In conclusion, Mr. Bassin stated that the phrase "direct or indirect", as used in the Protocol was generally a term of art calculated to clarify that all property interests are contemplated by the provision.

Mr. Otabe asked whether national treatment would apply if the scope of direct or indirect property interests under Japanese law was different from United States law. In other words, if certain indirect interests were not subject to compensation under Japanese law, but would be under United States law, would Japanese national treatment prevail.

Mr. Bassin replied to the effect that United States law is not applicable in Japan and that, generally, national treatment would apply.

however, if such national treatment was at variance with the international standard or concept of compensation in expropriation cases, further consideration of this point might become necessary. As an example, Mr. Bassin stated that if property were taken for a public purpose and compensation provided in the form of bonds maturing in 10 years, a question would arise as to whether such compensation met the requirements of the treaty which provides for just, adequate and prompt compensation.

In response to a question by Mr. Otabe as to whether loss of expected profits was compensable under American law, Mr. Bassin said that, as a general rule, loss of expected profits was not an element of compensation in eminent domain proceedings. Mr. Otabe inquired as to whether each state in the United States is required to pay just compensation where property is taken for a public use. Mr. Bassin replied that each state in America, as well as the Federal Government, is required by law to compensate for the taking of private property for public use and that the law on the subject as defined by the State and Federal courts is generally uniform.

Mr. Yukawa then referred to paragraph 4 of the Protocol and asked why postal services were expected from the provisions of Article XVII, paragraph 2 (c), and of Article XIX, paragraph 4.

Mr. Bassin replied that Article XVII, paragraph 2 (c), did not apply to postal services because it was customary to extend certain privileges to nationals (particularly officials) not granted to aliens. He added that franking privileges (free postal service) were granted to members of the United States Congress and other officials, as well as to military personnel serving overseas, and that this reservation was needed to cover these cases. Mr. Bassin added that he had no knowledge of any other postal service not available to aliens on a national treatment basis, but that the question would be referred to the Department of State for verification.

Mr. Otabe stated that similar free postal privileges were extended in Japan to certain individuals, including candidates to public office during an electoral campaign.

With respect to the exception of the postal service from the provisions of paragraph 4, Article XIX, Mr. Singer stated that it was customary among nations to award mail contracts to vessels and aircraft of their own registry. Such arrangements were normally limited to national vessels and aircraft, particularly with respect to the granting of bounties for the carriage of mail. He added that some South American countries permitted their nationality registered air lines to sell air mail postal service to the public, actually selling the postage stamps involved, from which the Government received a share of the proceeds. In these cases, added Mr. Singer, the air lines would themselves make arrangements with foreign air lines for the carriage of mail over international routes.

Mr. Adams stated that a mail contract and bounty system (i.e., payment by the Government, usually on a mileage basis, of a sum of money sometimes greater than the actual cost by weight of the mail involved) was a means of encouraging the development of international routes by nationally registered shipping and air lines, and was regarded as of special importance during the initial stages of unprofitable commercial operation. Such systems and the favoring of national vessels and aircraft (normally to the exclusion of all foreign vessels and aircraft) in the carriage of mail were accepted international practice.

It was agreed that the next meeting would be held on Thursday, April 17, 1952, with discussions to continue on the Protocol to the FCN Treaty.

/s/ M. Yukawa

Morio Yukawa
Director
Economic Affairs Bureau
Ministry of Foreign Affairs

/s/ Frank A. Waring

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